IN THE HIGH COURT OF UTTARAKHAND AT NANITAL

Writ Petition No. 5993 (S/S) of 2001
(Old No. 16540 of 1991)

Laxman Singh
S/o Late Sri Dhan Singh
R/o C/o Smt. Devki Devi H.N. Bahuguna
Base Hospital Sri Kot, Sri Nagar Garhwal
District Pauri Garhwal. ……..Petitioner

Versus

1. State of U.P.
2. Principal, Government Polytechnic
   Sri Nagar Garhwal
   District Paauri Garhwal.

……..Respondents

Shri Rajendra Dobhal, learned counsel for the petitioner.
Shri H.M. Raturi, learned standing counsel for the State.

Hon'ble Prafulla C. Pant, J

By means of this writ petition, the petitioner has challenged the order dated 25.03.1991, passed by respondent No. 2 Also, a writ in the nature of mandamus has been sought directing the respondents not to interfere in the working of the petitioner on the post of Office Draftsman.

2. Heard learned counsel for the parties.

3. Brief facts of the case are that in pursuance to the advertisement dated 28.11.1990, the petitioner submitted his application for the post of Office Draftsman in the pay scale of Rs. 1200-2040 in Government Polytechnic, Srinagar, District Pauri Garhwal. On 12.12.1990, he

appeared before the Selection Committee for an interview and was selected for the aforesaid post. On the recommendation of the Selection Committee, the petitioner was appointed as Office Draftsman on 17.12.1990 (a copy of the appointment letter is Annexure-2 to the writ petition) and joined his duties on 19.12.1990. It is further stated in the writ petition that on 25.03.1991, the principal of the college, passed an order informing the petitioner that since his appointment was only for a period of three months, he is not permitted to work thereafter. It is alleged on the writ petition that no such condition was mentioned in the advertisement, made by respondent no. 2. The petitioner's case is that his appointment was against the regular and substantive vacancy. It is further stated by the petitioner that he worked during the period of three months to full satisfaction of the authority concerned. Challenging the order dated 25.03 1991, it is alleged that since the appointment of the petitioner was as per the Rules, as such, the respondents cannot restrain the petitioner from working on said post. (This writ petition was filed before Allahabad High Court in the year 1991 from where it is received by transfer under Section 35 of U.P. Reorganisation Act, 2000, for its disposal).

4. A counter affidavit was filed by Principal Government Polytechnic College, Srinagar, Pauri Garhwal, on behalf of the respondents in which it is stated that the appointment letter dated 17.12.1990, issued to the petitioner was a time bound and temporary appointment against the post of Office Draftsman and after the period of three months, he had no right to continue on said post. It is further stated that regular appointment could have been made by the principal only after an expert is nominated by Director Technical Education. It is further stated in the counter affidavit that petitioner was not appointed against the substantive post nor his work was satisfactory.

5. In the rejoinder affidavit, the petitioner has reiterated the averments made in the writ petition and alleged that in pursuance to the same advertisement, published in Amar Ujala, other employees on the post of labour Assistant, Gardener, Peon and Chowkidar, were also appointed and they are permitted to continue on their posts. It is alleged that the petitioner was discriminated arbitrarily.

6. The appointment letter (annexure-2 to the writ petition) of the petitioner itself shows that the petitioner was appointed only for three months on the post of Office Draftsman and his services could have been extended after considering the

satisfactory services rendered by him. Learned counsel for the respondents argued that said condition of the appointment letter, itself shows that the petitioner could not have been continued in service as of right.

7. Shri Rajendera Dobhal, learned counsel for the petitioner, argued that there was no condition in the advertisement that the appointment shall be only for three months and as such, the condition in the appointment letter itself is illegal. The petitioner cannot blow hot and cold together. He has joined in the service in pursuance of the appointment letter. If the petitioner had any reservation to the condition imposed in the appointment letter, he could have refused to accept the appointment. The next submission advanced on behalf of the petitioner is that the services of the other employees, recruited through same selection process, were extended while that of the petitioner was not extended and the petitioner is discriminated in violation of Article 14 of constitution of India. The post of Office Draftsman was only one and the other posts relate to Class IV employee of Peon, Chowkidar, Gardener etc. The appointment letters., issued to them are enclosed with he supplementary affidavit, filed by the petitioner, which show that in pursuance to the letter dated 02.05.1991, received from Joint Director, Technical

Education, services of other recruited employee, namely Vinod Lal, is extended. It is also clear from the copy of the annexures, filed to the supplementary affidavit by the petitioner that the services of the other Class IV employees were extended after considering their work and conduct during the period of three months. As against the petitioner, it is stated in para-3 of the counter affidavit that his work and conduct was not found satisfactory.

8. Annexure- 1 to the counter affidavit, shows that the Joint Director, Technical Education, sent a letter to the Principal, Government Polytechnic college, Srinagar (District Pauri Garhwal), stating that the appointment of the petitioner suffers from the irregularities.

9. Considering the fact that the petitioner was appointed only for the period of three months, and having gone through letter dated 02.05.1991, issued by Joint Director, Technical Education (copy annexure- C.A. 1 to the counter affidavit), this court finds no illegality in the impugned order (annexure- 3 to the writ petition), whereby it is informed to the petitioner that his services has come to an end after 18.03.1991.

10. In the above circumstances, the writ petition is liable to be dismissed. The same is dismissed.

However, the petitioner has continued in service for more than fifteen years under the cover of interim order, passed by Allahabad high court. In the circumstances, it is desirable to leave it open to respondent No. 2 to consider the representation of the petitioner, which he may make within a period of fifteen days from today, regarding his re-appointment in service, if permissible under the Rules. The interim stay order stands vacated.

Dated. 24.09.2007 **(Prafulla C. Pant, J.)**
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